

SERVED: June 1, 1994

NTSB Order No. EA-4176

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 25th day of May, 1994

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DAVID R. HINSON,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	
v.	)	Dockets SE-11928
	)	and SE-11930
	)	
DON C. ATKINS and	)	
DAVID B. RICHARDS,	)	
	)	
Respondents.	)	
	)	

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**ORDER DENYING RECONSIDERATION**

The Administrator has requested that the Board reconsider its decision in NTSB Order No. EA-4078, issued on February 16, 1994.<sup>1</sup> In that opinion, the Board dismissed the Administrator's order, which alleged violations of sections 91.75(a) and 91.9 of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 91, as to respondent Atkins, and section 91.9, as to respondent Richards, as a result of an altitude deviation which occurred during their operation of a flight for Piedmont Airlines.

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<sup>1</sup>Respondents have not filed a reply.

The Board found that respondents should not be held liable for their deviation from an altitude clearance because ATC failed to catch a mistake they made when they read back ATC's acknowledgment of another Piedmont flight's radio communication as a new altitude clearance for respondents' aircraft. The Administrator asserts that dire consequences will result from our holding that a deviation, initiated by pilot error, will be excused where ATC fails to monitor a readback so as to detect a clear misunderstanding -- that we will send "a signal to pilots, even those held to the highest standard of care, to rest easy because they will bear no responsibility for inattentiveness if air traffic controllers do not catch the pilots' mistakes." Petition at 14. We reject the notion that this decision will cause pilots to be less vigilant in the cockpit. In our view, this decision emphasizes the importance to be placed on readbacks, and only reflects our concern that, as we noted recently in Administrator v. Swafford and Coleman, NTSB Order No. EA-4117 at 7 (1994), "[a] readback would be futile if the controller who is receiving it fails to listen carefully and assure that it is consistent with his instruction." Id. at 7, citing Administrator v. Holstein, NTSB Order No. EA-2782 at 8 (1988).

**ACCORDINGLY, IT IS ORDERED THAT:**

The Petition for Reconsideration is denied.

VOGT, Chairman, HALL, Vice Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above order.